

## CLAIM SUMMARY / DETERMINATION

<b>Claim Number:</b>	918029-0001
<b>Claimant:</b>	Rhode Island Dept of Environmental Management
<b>Type of Claimant:</b>	State
<b>Type of Claim:</b>	Removal Costs
<b>Claim Manager:</b>	[REDACTED]
<b>Amount Requested:</b>	\$9,802.80

### **FACTS:**

At about 1030 Wednesday, March 8, 2017, the Harbor Master of the Port of Galilee notified the Rhode Island Department of Environmental Management (RIDEM) of a diesel spill behind Rhode Island Engine. The harbor master had already deployed boom along the bulkhead. He requested assistance in cleaning up the spill. When the RIDEM responder arrived, he observed emulsified red diesel in the water. He contacted Newton B Washburn LLC (NBW), an oil spill response contractor (OSRO) to contain and clean up the spill. They deployed absorbents, a vac truck and a barge to remove the diesel. The Coast Guard responders arrived and took samples of the oil. NBW completed the cleanup on March 9, 2017. The CG responders returned that day to verify that the cleanup was complete. No responsible party was identified.

### **CLAIMANT AND CLAIM:**

The Claimant is the Rhode Island Department of Environmental Management. It seeks reimbursement of its uncompensated “response costs” related to the personnel time and vehicle costs, and OSRO contractor costs that it expended in order to respond to the incident. The Claimant requests reimbursement in the total amount of \$9,802.80.

### **APPLICABLE LAW:**

"Oil" is defined in relevant part, at 33 USC § 2701(23), to mean “oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil”.

The Oil Spill Liability Trust Fund (OSLTF), which is administered by the NPFC, is available, pursuant to 33 USC §§ 2712(a)(4) and 2713 and the OSLTF claims adjudication regulations at 33 CFR Part 136, to pay claims for uncompensated removal costs that are determined to be consistent with the National Contingency Plan and uncompensated damages. Removal costs are defined as “the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from an incident”.

Under 33 USC §2713(b)(2) and 33 CFR 136.103(d) no claim against the OSLTF may be approved or certified for payment during the pendency of an action by the claimant in court to recover the same costs that are the subject of the claim. See also, 33 USC §2713(c) and 33 CFR 136.103(c)(2) [claimant election].

33 U.S.C. §2713(d) provides that “If a claim is presented in accordance with this section, including a claim for interim, short-term damages representing less than the full amount of damages to which the claimant ultimately may be entitled, and full and adequate compensation is unavailable, a claim for the uncompensated damages and removal costs may be presented to the Fund.”

Under 33 CFR 136.105(a) and 136.105(e)(6), the claimant bears the burden of providing to the NPFC, all evidence, information, and documentation deemed necessary by the Director, NPFC, to support the claim.

Under 33 CFR 136.105(b) each claim must be in writing, for a sum certain for each category of uncompensated damages or removal costs resulting from an incident. In addition, under 33 CFR 136, the claimant bears the burden to prove the removal actions were reasonable in response to the scope of the oil spill incident, and the NPFC has the authority and responsibility to perform a reasonableness determination. Specifically, under 33 CFR 136.203, “a claimant must establish -

- (a) That the actions taken were necessary to prevent, minimize, or mitigate the effects of the incident;
- (b) That the removal costs were incurred as a result of these actions;
- (c) That the actions taken were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC.”

Under 33 CFR 136.205 “the amount of compensation allowable is the total of uncompensated *reasonable* removal costs of actions taken that were determined by the FOSC to be consistent with the National Contingency Plan or were directed by the FOSC. Except in exceptional circumstances, removal *activities* for which costs are being claimed must have been coordinated with the FOSC.” [Emphasis added].

**DETERMINATION:**

***A. Overview:***

1. The NPFC has determined that the actions undertaken by the Claimant were coordinated with the USCG FOSC (MST1 [REDACTED] a from East Providence, Sector Southeastern New England) and are consistent with the NCP. This determination is made in accordance with the provisions of sections 1002(b)(1)(B) and 1012(a)(4) of OPA, 33 U.S.C. §§ 2702(b)(1)(B) and 2712(a)(4).
2. The incident involved a discharge of “oil” as defined in OPA 90, 33 U.S.C. § 2701(23), to navigable waters.
3. The claim was submitted to NPFC within the six year statute of limitations. 33 U.S.C. § 2712(h)(1).
4. In accordance with 33 CFR § 136.105(e)(12), the Claimant has certified that no suit has been filed by or on behalf of the Claimant in court for the claimed uncompensated removal costs.
5. The NPFC Claims Manager has thoroughly reviewed all documentation submitted by the Claimant with the claim, and has determined which of the removal costs presented were incurred for removal actions taken by the Claimant in accordance with the National Contingency Plan (NCP), and whether the costs for these actions were reasonable and allowable under OPA 90 and 33 CFR § 136.205.

***B. Analysis:***

The NPFC Claims Division (CA) reviewed the cost invoices and dailies submitted by the Claimant to determine whether the Claimant had incurred all costs claimed. The review focused on: (1) whether the actions taken were compensable “removal actions” under OPA 90 and the claims regulations at 33 CFR 136 (e.g., actions to prevent, minimize, mitigate the effects of the incident); (2) whether the costs were incurred as a result of these actions; (3) whether the actions taken were consistent with the NCP or directed by the FOSC, and (4) whether the costs were adequately documented, and were reasonable and necessary.

The Claimant amended its claim via emails in response to NPFC’s requests for information. On May 1, RIDEM raised the amount of vehicle miles claimed to 137 from the 104 miles initially claimed. This increase was due to the Claimant’s calculation using Google Maps that showed actual miles traveled

rather than the initially claimed estimate. Via emails on May 10, the Claimant also reduced the RIDEM employee hours claimed from 11 hours to only 2 hours of overtime for its responding employee and amended his hourly rate from \$67.73 to \$65.6671.

After reviewing the claimed costs and making adjustments, the NPFC hereby determines that \$9,202.57 of the Claimant's costs represent OPA-compensable response actions that were performed in accordance with the NCP, and that the rates charged by the contractor were in accordance with the contractor's published rates and invoiced costs at the time services were provided. The NBW costs are payable as presented in the amount of \$8,997.94.

Due to their reduction of claimed RIDEM employee hours down to 2 hours and their reduction of the hourly pay rate to \$65.67, RIDEM has reduced the claimed labor costs by \$613.73 for a net claim of RIDEM labor at \$131.33. The NPFC allows the resulting claimed labor total of \$131.33. Due to the increase in miles driven to 137 and the fact that RIDEM claimed mileage at a rate of \$0.575 per mile when their documentation only supports mileage at a rate of \$0.535 per mile,<sup>1</sup> the allowed mileage cost has been adjusted for a net increase of \$13.50 and a total allowed of \$73.30. These adjustments result in a net denial of \$600.23 in initially claimed costs.

The NPFC hereby determines that the OSLTF will pay **\$9,202.57** as full compensation for the reimbursable removal costs incurred by the Claimant and submitted to the NPFC under claim #918029-0001. All reimbursable costs are for charges incurred by the Claimant for removal actions as that term is defined in OPA and are compensable removal costs, payable by the OSLTF as presented by the Claimant. Of the claimed costs, a total of **\$600.23** are denied.

**DETERMINED AMOUNT: 9,202.57**

Claim Supervisor: [REDACTED]

Date of Supervisor's review: *5/24/18*

Supervisor Action: *Approved*

Supervisor's Comments:

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<sup>1</sup> December 22, 2016 State of Rhode Island Inter-Office Memorandum re: decreased mileage reimbursement rate as of January 1, 2017.